AUS DER RECHTSPRECHUNG
DE LA JURISPRUDENCE
DALLA GIURISPRUDENZA

Cour Européenne des Droits de l’Homme, 13. 2. 2008: Accouchement anonyme: droit à la connaissance de ses origines (Béatrice Cottier) 371
BGer, 11. 10. 2002: Unzutreffende Darstellung, wenn ein Ehegatten allein vorliegt 377
EVG, 18. 10. 2002: Solidarische Haftung der Ehegatten für Krankenkassenkosten; Rechtsprechung 381
BGer, 23. 11. 2002: Die Bewegung im Massnahmeverfahren sind beschränkt; Überschussverteilung 385
BGer, 24. 12. 2002: Berücksichtigung der Wohnkosten
KGer SG, 26. 9. 2002: Baraufforderung zur Austrittskosten; Zuständigkeit des Eheschutzgerichts 385
TF, 26. 8. 2002: Liquidation des dritten Ehegatten 386
BGer, 23. 11. 2002: Festlegung der Unterhaltsbeträge; güterrechtliche Auseinandersetzung 390
BGer, 14. 11. 2002: Kostenvoranschlag; Rechtsprechung 396
OGer BL, 8. 1. 2002: Verzicht auf Ansetzung einer Bedenkfrist 399
KGer BL, 8. 1. 2002: Keine Unzutreffende wegen HIV-Infektion 400
KGer BL, 3. 9. 2002: Nichtzustimmung der Konvention; ungelöste Prozessführung 402
BGer, 9. 12. 2002: Festlegung der angemessenen Entschädigung (Bemerkungen: Karina Baumann / Margareta Lauterburg) 410
KGer SG, 14. 10. 2002: Angemessene Entschädigung in Form einer Rente nach sehr langer Ehe 412
KGer BL, 19. 11. 2002: Zweisprachige Anzeige: Annullierung der Teilnehmung bei öffentlicher Umität (Bemerkungen: Katerina Baumann / Margareta Lauterburg) 416
TF, 26. 9. 2002: Qualité pour réclamer les contributions des enfants dans le procès en divorce 421
TF, 20. 12. 2002: Revenu hypothétique supérieur; méthode du minimum vital avec répartition des l'excédent limitation de la durée de la contribution 428
BGer, 28. 1. 2003: Anspruch auf nachehelichen Unterhalt 433
TA TI, 10. 4. 2002: Modif dich de dominié de di divorce; réduction de contributio de mantenamento ai sens dell’art. 331 cpv. v CC; migliora mento del reddito della beneficiaria ; prova del tenore di vita garantilo dal contributo 433
TA TI, 3. 10. 2002: Esecuzione del mantenimento dopo il divorzio; diffusa ai debitori 440
KGer SG, 19. 10. 2002: Widerruf des gemeinsamen Scheidungsverhältnisses; Kostenrisiko 442
BGer, 15. 10. 2002: Voraussetzungen für eine Neuzuteilung der ererbten Sorge; Anhörung des Kindes 444
BGer, 8. 11. 2002: Besuchsrecht und Übernachtung; Anhörung der Pflegeeltern; Entfahrungspflicht 449
BGer, 13. 11. 2002: Entschädigung über Neuregelung der ererbten Sorge; formelle Rechtswirksamkeit; Antrag auf Anordnung eines Fachgutachtens 449
BGer, 18. 11. 2002: Begehrtes Besuchsrecht; Fernenrecht; Neubesetzung 453
BGer, 19. 12. 2002: Vorrang des Kindeswohls; Ordonnance; Beschluss 455
TC FR, 2. 9. 2003: Béguin: autorité parentale; principe de la solidarité; droit des enfants 465
TC FR, 23. 10. 2002: Modification du jugement de divorce; adoption aus strukturen novell; survenant chez les parents ou chez l'enfant 466
KGer SG, 6. 9. 2002: Alterierende Obligations nach Trennung; Voraussetzungen 468
BGer, 11. 11. 2002: Kindertagung; Zulässigkeit des Benevel; Rechtsminderung 470
BGer, 31. 1. 2003: Kindespflicht; Rückführung 476
TF, 19. 12. 2002: Calcul d'une contribution d'entretien en faveur d'un enfant mineur 479
TA TI, 13. 2. 2002: Unzutreffendes nach Trennung: Voraussetzungen 482
TC FR, 11. 2. 2003: Kapazität der Kindergarten; Rededtio sporadica; insassen der ohne formelle professionelle 482
TA TI, 3. 12. 2002: Intégration légitimiation et riconosc; qualité d'parent du figli 487
BGer, 18. 2. 2003: Berücksichtigung der Franchise bei der Bemessung des Existenzminimums 491
Methodological Aspects of Harmonisation of Family Law*

Ingeborg Schwenzer, Prof. Dr. iur., L.L.M., Basel

Keywords: Harmonisation of law, family law, comparative law, methodology
Stichwörter: Rechtsharmonisierung, Familienrecht, Rechtsvergleichung, Methode.
Mots clefs: Harmonisation du droit, droit de la famille, droit comparé, méthode.

I. Introduction

Let me start by assuming that we all have reached the same answer to the open question of whether it is desirable to harmonise or even unify family law. That we all agree that the answer is yes. And that we further agree that this ambitious endeavour is feasible. But even if we do come this far, our problems are not over. Indeed, it is pitfalls await us along the path. "Methodos", the Greek notion, means "the way to something", the systematic procedure to reach a certain goal. Thus, my analysis will be extremely practical.

"Methodos", the Greek notion, means "the way to something", the systematic procedure to reach a certain goal. Thus, my analysis will be extremely practical. So let me take you on an adventurous journey of unifying family law, and let us see what pitfalls await us along the path.


5 E.g. LEGRAND PIERRE, European Legal Systems are not Converging, International and Comparative Law Quarterly 45 (1996), 60 ff.


support. Let us take, for example, Germany on the one hand and England on the other. According to § 1579 No. 6 of the German BGB, post-divorce spousal support can be reduced or even denied if there has been manifestly gross, one-sided misconduct on the part of the spouse seeking support. In England, pursuant to Sec 25 (2) (g) of the MCA, the conduct of the parties, that is fault, is one of several factors that the court must take into account when deciding upon the financial consequences of divorce. Taken these provisions at face value, one would suppose, that the German courts would consider fault much less frequently than the English courts. But as early as in 1973 the English Court of Appeal decided that a reduction or even denial of a financial provision should only be thought of in case of obvious and gross misconduct - that is, if granting financial relief would be "repugnant to anyone's sense of justice". This formula sounds pretty similar to the wording of the German statute. Can one then suppose that an identical case will be decided alike in the two countries? Not at all. Apparently judges in Germany and England differ considerably in what they consider to be obvious and gross misconduct. Thus there are many German court decisions discussing whether adultery amounts to such misconduct, whereas in England, as in many other Anglo-American legal systems, it almost seems that nothing short of an attempted murder of the obligor spouse will suffice.

One further difference is to be noted: In Germany "obvious and gross misconduct" may only be invoked against the requesting spouse, i.e. in almost all cases the wife, whereas in England and other Anglo-American legal systems it works both ways. It is possible to increase an award if the obligor's behaviour amounted to obvious and gross misconduct, especially in cases of domestic violence by the husband against the wife - cases that in general do not entail any additional financial consequences under German law.

Only if one is aware of such discrepancies in interpretation can one usefully discuss the relevance of fault in post-divorce spousal support.

14 This amounts to an indirect or factual discrimination of women, see DETHOLP NINA, Reform of German Family Law - a Battle against Discrimination, European Journal of Law Reform 3 (2001), 221-241.

Let me draw your attention to another feature of family law that illustrates the differences between the law in books and the law in action: Court decisions reflect but a very small percentage of family law resolutions. Thus probably in most countries 90 per cent of all divorce proceedings or even more end with a separation or divorce agreement that resolves the financial issues. It is these agreements and not court decisions that determine the life of most divorcees, although of course they are bargained for in the shadow of the law. If one wants to get a clear picture of the consequences of divorce in a given country, then one has to examine the reality of such agreements and - going even a bit further - the role of the professions involved in negotiating them.

IV. The functional approach

In family law as in the classical fields of comparative law, or even more so, the starting point has to be the functional approach. There is little sense in comparing institutions, but it is absolutely necessary to ask what the underlying problem is that a certain legal provision is aimed to redress.

Let me give you one example, the question of pension splitting for husband and wife at divorce, that is the equalisation of pension rights accrued during marriage. Germany pioneered in these fields, expressly providing for pension splitting as early as 1976. It was not until recently that other countries followed suit, for example, the Netherlands in 1995, and England and Switzerland in 2000. Still, even today, there are many legal systems that do not split pensions at divorce, although they all face the same factual problem: the wife who took care of the family and was not employed outside the home (at least not full-time) and therefore accumulated less pension rights than her husband, who worked full-time at higher pay. But focussing only on explicit pension splitting rules would lead to a totally wrong impression. In many legal systems the differ
ference in spouses’ pension rights is taken care of by property distribution upon divorce. Pension rights accumulated during the ongoing marriage are regarded as marital property and may thus be divided upon divorce, be it equally or according to the discretion of the court. In still other legal systems differences in accumulated pension rights have to be taken into account in setting post-divorce spousal support awards. This leads us to the conclusion that an overall understanding of how countries deal with the inequality of spouses’ work-related retirement accumulations can be achieved only by considering all the economic consequences at divorce: explicit rules on pension splitting, matrimonial property law in general, and spousal support, at least.

Yet another family law example may be mentioned here. The possibility of premarital contracts to regulate the economic consequences of divorce is currently a hotly debated topic. A country’s treatment of the issue can be fully understood only against the background of its matrimonial property and spousal support regimes. Even if one finds that spouses are free to agree upon a regime of separate property, it is possible that a country’s courts may provide relief outside family law that circumvents the agreement, yet avoids any overt control of its contents. Well known is, for example, the longstanding tradition of Anglo-American courts, which make use of trust doctrines when family law does not provide suitable remedy. In other countries fictitious employment contracts or partnerships are popular tools to compensate wives who helped build up their partners’ businesses and find themselves without any legal title to the proceeds when it comes to divorce.

These examples may suffice to illustrate the functional comparative method and how it applies in the field of family law.

**V. Converging tendencies**

Once we have come this far and are able to analyse the underlying problematic fact patterns and identify their solutions, however disguised they may be, we will find quite a number of converging tendencies in European family law. As early as the 1970s a German author labelled this trend “Uniform Law Through Evolution”. Because these legal changes only reflect socio-demographic developments in familial behaviour, let me recall the major changes that have taken place in Western industrialised states during recent decades.

The most salient feature is the rise in the divorce rate. Since the 1970s, it has more than doubled nearly everywhere. In many countries, the probability of divorce has now reached 40 to 50 per cent. In Scandinavia, however, a certain stagnation at this high level has been observed since the 1980s, indicating that the saturation point might now have been reached. The high number of divorces brings about manifold further developments. These are, on one hand, the rapid increase of children living in stepfamilies and, on the other, the growing number of single-parent families.

This is closely linked to the phenomenon described as the feminisation of poverty. Indeed, studies of poverty have shown that in many countries divorce constitutes a much higher risk factor for women than for men and that women living alone with children are especially touched by poverty.

Other features are the increase in age at first marriage and the general decrease in marriages. Taking the example of France, this means that today only approximately 56 per cent of all women below the age of 50 have ever married, compared to approximately 92 per cent of all women of this age group who had married at least once in 1970.

Simultaneously, cohabitation has increased in all countries, in some places dramatically indeed. In the Scandinavian countries, cohabitation can be considered an actual alternative to marriage, whereas in many other countries non-marital unions are of shorter duration and frequently are formalised when children are born.

A general decline in fertility rates can also be observed. Since about 1965, the reproduction rate of the population has fallen to a below-replacement level in all developed countries. On the other hand, the number of out-of-wedlock births has

---

24 E.g. in Sweden: Chapter 10, § 3 para. 3 Marriage Act. United States: AMERICAN LAW INSTITUTE (n. 13), § 4.08 SEC. 1 (a).
25 E.g. in France: Art. 272 CC.
29 The most prominent voice dismissing the convergence thesis is LEGRAND PIERRE, International and Comparative Law Quarterly 45 (1996), 52-81.
increased dramatically in recent decades. In some countries, namely in Scandinavia, it has reached a level between 50 and 65 per cent.38

These demographic developments have nevertheless not occurred to the same extent or at the same pace in all European countries.39 Large differences remain, with Scandinavian countries at one extreme and the Latin countries and Ireland at the other.40

Family law could not and has not stayed unresponsive to these profound socio-demographic changes. As MARTNY once wrote: “The basic issues [have been] resolved”.41 International Conventions, such as the European Convention on Human Rights42 and the UN Convention on the Rights of the Child, have contributed a lot in settling central questions.43

Converging tendencies can be found in the substantive law of divorce. In almost all countries marital breakdown is if not the only, at least the central ground for divorce, and notions of fault have been largely banned.44 Even the consequences of divorce in most parts of Europe no longer depend upon fault.45 Discrimination against illegitimate children has been abolished in most countries.46 Formal equality between the spouses has also been implemented.47 There is widespread consensus that the person who renders the home-maker’s services and therefore refrains from gainful employment has a right to participate in the wealth accumulated during marriage, including pensions.48 The last few years even show a converging tendency to provide a legal institution for same-sex partners.49

But all these are mere tendencies, and it would be premature to think that one can build uniform rules on these tendencies.

VI. Different codification techniques

The differences between the legal systems are already present when it comes to codification techniques. Due to historical developments, we find significant differences between the common law and the continental legal systems.

In the common law tradition, there are fewer rules for relationships in intact family. Instead the law focuses on conflict situations.50 In contrast, the continental systems tend to set up abstract rights and duties for intact families,51 although it is perfectly clear for continental lawyers, too, that they come into play only when the personal relationship is no longer functioning. The differences in practice are, accordingly, not as big as they may initially seem.

Another salient characteristic of common law statutes is their use of legal definitions,52 something unknown to continental statutes. When developing uniform rules that are to be applied by persons from different legal backgrounds who may associate different meanings to a term, such legal definitions might prove extremely helpful.

Let me call your attention to a third point on which national family law statutes differ considerably. It is the amount of discretion given to the courts. Take the financial consequences of divorce, for example, one of the central concerns of contemporary divorce law. As I already mentioned, according to English law the court may make financial orders, having regard to a number of factors, which permits case-by-case analysis. The leading cases of White v. White53, Cowan v. Cowan54 and Lambert


39 MARTNY DIETER (n. 1), 151, 167.


41 MARTNY DIETER (n. 1), 151, 167.

42 The latest example for the impact of the ECHR are the judgements of the European Court of Human Rights in the cases Goodwin v. UK and I v. UK (11 July 2002) introducing the right of transsexuals to marry. The judgement of Mareckx v. Belgium (13 June 1979) had a comparable impact concerning the equality of children born out of wedlock with children born to married parents, see PINTENS WALTER/VAWNVENICZELEN KROEN (n. 1), 16 ff.


44 In some countries fault remains a ground for divorce among others, most importantly France (Art. 242 CC, Art. 243 CC), Belgium (Art. 229 CC, Art. 231 CC), Austria (§ 49 Ehegesetze, England (Sec. 1 (2) (a) - (c) MCA 1973).

45 An exception is Belgium, where fault excludes the right to maintenance after divorce (Art. 301 § 1 CC).

46 In the Netherlands and Belgium, the Mareckx-case (ECHR 13 June 1979, Series A, No. 31) has given an important impulse for the reform in favour of illegitimate children, see PINTENS WALTER/VAWNVENICZELEN KROEN (n. 1), 18 ff.

v. Lambert have produced some long awaited guidelines, but a great deal of discretion is still left to the courts. A rather similar situation can be found in the Scandinavian countries. Once again, however, the continental legal systems show a different picture. As far as matrimonial property regimes are concerned, they all employ hard and fast rules, defining exactly what goods have to be taken into account, at what time the respective properties have to be evaluated, and what the share of each spouse will be. As to spousal support, although many continental legislators also defer to the discretion of the court, there are other approaches as well. Take, for example, German law. In the German Civil Code seven provisions regulate the division due in a given case down to Euro and Cent.

In the bargaining context they work against the economic weaker party, who settles for less than under hard and fast rules. This is why the Principles of the Law of Family Dissolution worked out by the American Law Institute and published recently now expressly define what marital property is, what share each spouse will get and how post-divorce spousal support is to be calculated. The Principles even recommend the employment of mathematical formula for some of these purposes.

VII. Divergences due to different structures of administration of justice and the law of procedure

Major differences between legal systems exist regarding the structures of administration of justice. This may have a strong effect on substantive law. Thus, for example, the level of protection afforded to the weaker party by a requirement that a marriage contract be notarised depends upon the relevant law for notaries. Are notaries members of the legal profession or not; are they obliged to counsel the parties or do they simply authenticate the signatures on a written agreement? The effectiveness of the law of child protection also differs according to whether youth authorities are filled by professionals or laypersons. Likewise it is highly important whether a country provides for family courts and a specialised bar or whether judges may even be laypersons and whether legal counsel is provided and required in family law matters. Finally the level and the frequency of mediation, as well as the professions of persons who practise it, influence family law in action.

66 § 4.03-4.08 ALI Principles.
67 § 4.09-4.12 ALI Principles.
68 Chapter 5 ALI Principles.
69 E.g. § 5.04 ALI Principles recommends to establish a rule that applies "a specified percentage to the difference between the incomes the spouses are expected to have after dissolution". This percentage is called the durational factor because it increases with the marriage's duration, see ALI Principles, § 85 ff.
70 See the contributions in: MeULDErs-KLEIN MAriE-ThErESE (ed.), Familles & Justice, Bruxelles 1997.
71 Switzerland for example knows a system of local child protection authorities with high lay participation, whereas France has a system of professional "judges des mineurs".
73 See EKKELAAR JOHN/MACLEAN MAVi/BEINART SARAH (n. 18).
75 E.g. § 78 of the German Law on civil procedure (Zivilprozessordnung) states a requirement to be represented by a lawyer in divorce and related matters before the family courts.
VIII. Divergences due to different family policies and family realities

Having reached this stage of analysis, we can tackle the substantially differing solutions among several national legal systems. How do we react, for example, once we discover that in one country parents owe support to their adult children who are still students, but in another country support obligations are due only for minor children? The explanation for this limitation can possibly be found in publicly funded scholarships that young adults can benefit from. Yet another example: If a legal system does not at all provide pension sharing at divorce, this need not mean, that women are left without means for their old age. It may instead be that women in that country do not need pension splitting or other financial provisions because they have very high employment rates accompanied by public care for children and/or state guaranteed income.77 Or it is even conceivable that kinship relations and family networks still function so well that women are not left in poverty.78

This leads us to differences in family realities. When it comes to joint custody for children after divorce established as a rule, it makes a big difference whether fathers take a truly active role in children and family work during the ongoing family— as it seems to be more and more the case in Scandinavia79— or not, as in Southern Europe, where patriarchal patterns still dominate.80

As these examples demonstrate, to get an overall picture of working family law is possible only if we include research on other areas of law that are elements of national family policies such as social law, labour law and tax law. European countries encompass a wide variety of family policies, ranging from Sweden that supports families with the declared aim of reaching gender equality, to Switzerland that defines family as a private matter without need of public support.81 Having this in mind,

77 This is the case in Scandinavia, see LEIRA ARNLAUG, Gender and the Family in Europe, London/New York 1998, 159, 168.
78 This is the case in Southern Europe, see FLAQUER XAVIER, Is there a Southern European model of family policy?, in: PERNER ANDREAS (eds.), Family Law and Policy in Europe, Frankfurt/M 2000, 15–33.
83 This is more or less a question of technicalities how to reconcile the different areas of law concerned. Likewise, before we start harmonising or even unifying family law, we need insights from sociology of law, family sociology and psychology.84 Indeed, this interdisciplinary exchange is indispensable.

IX. Divergences due to different value systems

Finally, most of the divergences in national family laws and family policy can only be attributed to different value systems.85 Why does one country rely upon post-divorce and kinship support duties, for example, while another provides public support?86 Why are there still so many countries which do not provide adequate rules for the breakdown of non-marital unions?87 Why are there still differences in parentage law for children born within and outside of wedlock?88 Why are premarital agreements scrutinised by courts in one country, but not in others?89 I could go on putting such questions endlessly.

Certainly all depends on the relevant value system. But what are the crucial issues that determine so many outcomes in family law as well as in the surrounding areas linked to family policy?

In my opinion the three basic points determine the orientation of all national family laws: The importance of marriage as a basis of family law, gender issues, and the conceptual dualism of private and public spheres.

The first central question is whether and if so to what extent family law is still firmly based on marriage. Many rules can only be explained as attempts to protect

it is more or less a question of technicalities how to reconcile the different areas of law concerned. Likewise, before we start harmonising or even unifying family law, we need insights from sociology of law, family sociology and psychology.84 Indeed, this interdisciplinary exchange is indispensable.
In this context, form is often more important than substance. Surely, there has been a constant process of deinstitutionalisation of family relationships in all countries during recent decades,

89 fuelled in part by the ever-growing importance of human rights. But major differences between countries still exist. The second crucial issue is the gender aspect of family law. It is true that all norms directly discriminating against women have been banned from family law statutes. Thus formal equal rights have been widely achieved. The remaining task is to track down subtle cases of indirect discrimination and achieve substantially equal opportunities, taking into account existing social inequalities. Sensitivity to this goal still differs greatly among countries.93

The third key question is closely linked to the first and the second: it centres around the conceptual dualism of private and public spheres. Are the tasks of bringing up children and caring for those who are not able to earn their own living by gainful employment private in nature? Or are enabling and motivating women to re-enter the workforce (by providing day care and the like) or encouraging men to engage in child-rearing by granting generous father’s leave public tasks?94 Is the exclusion of all financial adjustments upon divorce in a premarital contract or a separation agreement a private affair?95 How about domestic violence in the ongoing relationship?

All these examples demonstrate that deinstitutionalisation of family relationships and growing awareness of gender issues in family law go hand in hand with the family moving more and more to the public sphere. The aim of family law, in my opinion, is on the one hand not to hinder people in their quest for individually satisfying family structures and, on the other hand, to protect the interests of the vulnerable when individuals fail in that quest.

89 Examples are the still existing differences in parentage law between children born within and outside of wedlock or the spouses’ obligation to choose a common family name.


91 For the history of gender inequality in family law see e.g. DÖLMEYER BARBARA, Frau und Familie im Privatrecht des 19. Jahrhunderts, in: GERHARD KAUFMANN KONSTANTINIDIS v. BANEMANN or the Familie im Europäischen Rechtssysteme inhaltlich abweichenden Lösungen herumkommen. Diese sind letztlich auf unterschiedliche Familienpolitiken und Familienwirklichkeiten in den einzelnen Ländern zurückzuführen. Der Harmonisierungsprozess wird deshalb zentrale Wertfragen wie die Bedeutung der Ehe als Grundlage des Familienrechts, die Geschlechterfrage und schließlich den Dualismus von privater und öffentlicher Sphäre angehen müssen.


94 BASEDOW underlines the link between the equality of women and men in the workplace according to European Community law and equality in family law, see BASEDOW JURGEN, Konstantinidis v. Bange-}

95 See the important decision of the German Bundesverfassungsgericht, BVerfG, 1 BvR 12/92 of 6.2.2001, 31 (see www.bundesverfassungsgericht.de).

89 Examples are the still existing differences in parentage law between children born within and outside of wedlock or the spouses’ obligation to choose a common family name.


91 For the history of gender inequality in family law see e.g. DÖLMEYER BARBARA, Frau und Familie im Privatrecht des 19. Jahrhunderts, in: GERHARD KAUFMANN KONSTANTINIDIS v. BANEMANN or the Familie im Europäischen Rechtssysteme inhaltlich abweichenden Lösungen herumkommen. Diese sind letztlich auf unterschiedliche Familienpolitiken und Familienwirklichkeiten in den einzelnen Ländern zurückzuführen. Der Harmonisierungsprozess wird deshalb zentrale Wertfragen wie die Bedeutung der Ehe als Grundlage des Familienrechts, die Geschlechterfrage und schließlich den Dualismus von privater und öffentlicher Sphäre angehen müssen.


94 BASEDOW underlines the link between the equality of women and men in the workplace according to European Community law and equality in family law, see BASEDOW JURGEN, Konstantinidis v. Bange-}

95 See the important decision of the German Bundesverfassungsgericht, BVerfG, 1 BvR 12/92 of 6.2.2001, 31 (see www.bundesverfassungsgericht.de).
Résumé: La base de tout effort pour harmoniser le droit de la famille en Europe doit être la méthode du droit comparé. Si nous comparons les questions de fait et leurs solutions en matière du droit de la famille dans les différents ordres juridiques selon le principe de la fonctionnalité, nous constaterons qu'il existe de nombreuses tendances convergentes en droit européen de la famille. Cependant, des différences considérables demeurent, surtout par rapport aux techniques législatives, aux structures administratives et aux ordres procéduraux. Enfin, nous ne pourrons pas éviter une analyse exacte et une discussion des solutions divergentes quant au contenu des régimes juridiques européens. Celles-ci sont finalement imputables aux différentes politiques familiales et réalités familiales de chaque pays. C'est pourquoi le processus d'harmonisation devra aborder des questions de valeur centrales telles que l'importance du mariage en tant que fondement du droit de la famille, la question des sexes et enfin le dualisme de la sphère privée et publique.